

*NOTICE: This opinion is subject to formal revision before publication in the Board volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.*

**Buy-Rite Lumber Company d/b/a Buy-Rite Lumber Company and Buy-Rite Lumber Company of Medina and Teamsters Local Union No. 348, International Brotherhood of Teamsters, AFL-CIO. Case 8-CA-26887**

January 31, 1995

**DECISION AND ORDER**

BY CHAIRMAN GOULD AND MEMBERS STEPHENS  
AND COHEN

Upon a charge and amended charge filed on November 4 and 15, 1994, respectively, the General Counsel of the National Labor Relations Board issued a complaint and notice of hearing on December 5, 1994, alleging that Buy-Rite Lumber Company d/b/a Buy-Rite Lumber Company and Buy-Rite Lumber Company of Medina, the Respondent, has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 8-RC-15094. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On January 6, 1995, the General Counsel filed a Motion for Summary Judgment and brief in support with the Board. On January 10, 1995, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent did not file a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

In its answer the Respondent admits its refusal to bargain but attacks the validity of the certification on the basis of its contentions in the representation proceeding that it constitutes three separate employers requiring three separate elections, and that the bargaining unit of truckdrivers wrongly excludes yard employees.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not

raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times, the Respondent, an Ohio corporation, with offices and places of business in Copley, Medina, and Streetsboro, has been engaged in the sale of home improvement products. Annually, the Respondent, in conducting its business operations, purchased and received at its Copley, Medina, and Streetsboro facilities goods valued in excess of \$50,000 directly from points outside the State of Ohio.

At all material times, the Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and the Union has been a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

**A. The Certification**

Following the election held September 16, 1994, the Union was certified on September 27, 1994, as the collective-bargaining representative of the employees in the following appropriate unit:

All full-time truck drivers at the Employer's facilities located at Copley, Medina and Streetsboro, Ohio, excluding all other employees, all office clerical employees, professional employees, and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

**B. Refusal to Bargain**

About October 5, 1994, the Union requested the Respondent to bargain and, since about October 10, 1994, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

**CONCLUSION OF LAW**

By refusing on and after October 10, 1994, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

## REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

## ORDER

The National Labor Relations Board orders that the Respondent, Buy-Rite Lumber Company d/b/a Buy-Rite Lumber Company and Buy-Rite Lumber Company of Medina, Copley, Medina, and Streetsboro, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Teamsters Local Union No. 348, International Brotherhood of Teamsters, AFL-CIO, as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

All full-time truck drivers at the Employer's facilities located at Copley, Medina and Streetsboro, Ohio, excluding all other employees, all office clerical employees, professional employees, and supervisors as defined in the Act.

(b) Post at its facilities in Copley, Medina, and Streetsboro, Ohio, copies of the attached notice marked "Appendix."<sup>1</sup> Copies of the notice, on forms provided by the Regional Director for Region 8, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon

<sup>1</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. January 31, 1995

---

William B. Gould IV, Chairman

---

James M. Stephens, Member

---

Charles I. Cohen, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

## APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Teamsters Local Union No. 348, International Brotherhood of Teamsters, AFL-CIO, as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time truck drivers at our facilities located at Copley, Medina and Streetsboro, Ohio, excluding all other employees, all office clerical employees, professional employees, and supervisors as defined in the Act.

BUY-RITE LUMBER COMPANY D/B/A  
BUY-RITE LUMBER COMPANY AND  
BUY-RITE LUMBER COMPANY OF ME-  
DINA